

## Draft

## Guiding Principles: Working with Indian Tribes On North-of-the-Delta Offstream Storage

The California Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) endorse a proactive approach and propose the following principles to guide work with California Indian Tribes (Tribes) on North-of-the-Delta Offstream Storage. DWR is the State lead and Reclamation is the Federal lead. This approach is to comply with the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA), the CALFED Programmatic Record of Decision, and the Federal trust responsibility to Federally-recognized tribes.

### Guiding Principles:

1. Assure full disclosure of proposed actions.
2. Provide early and continuing collaboration through an open, transparent, and inclusive process.
3. Acknowledge Federally-recognized Tribes and respect their status as sovereign governments.
4. Acknowledge the cultural heritage of and work collaboratively with all California Indians.
5. Work collaboratively with Federally-recognized Tribes and the Bureau of Indian Affairs to analyze potential impacts to Indian Trust Assets.
6. Evaluate potential effects of proposed CALFED surface storage projects on Indian Trust Assets and cultural resources, including traditional cultural properties.
7. Provide reasonable time frames, in conformance with Federal and State laws and regulations, to work with Tribes and other parties to find solutions to issues regarding cultural resources.
8. Use feasible design and engineering techniques to mitigate NODOS impacts on Indian Trust Assets and cultural resources, including traditional cultural properties.
9. Evaluate potential benefits to Tribes in the development of surface storage projects.
10. Enter into Memoranda of Understanding at the request of individual Tribes, delineating the specific consultation approach a Tribe wishes to use related to NODOS.

## Draft

### **Bureau of Reclamation's Role:**

#### National Environmental Policy Act

Reclamation is the lead Federal agency for compliance with NEPA.

#### National Historical Preservation Act

Reclamation is responsible for compliance with Section 106 of the NHPA. Section 106 tasks, including inventory, evaluation, and document review responsibilities, will be defined in consultation with participating agencies. The requirements and procedures for implementation of Section 106 are defined in 36CFR800. As part of this process, Reclamation will consult with potentially-affected Tribes to determine if sites of religious or cultural significance are affected by the proposed undertaking. The Native American Graves and Repatriation Act provides regulations (43CFR10) for Native American human remains, funerary objects, or objects of cultural patrimony found on public land.

#### Indian Trust Assets

Reclamation is responsible for assessing potential impacts to Indian Trust Assets resulting from the proposed NODOS project and mitigating impacts in consultation with the affected Federally-recognized Tribes. Indian Trust Assets include land, timber, minerals, water rights, and hunting, gathering and fishing rights. The Federal trust responsibility for the protection of these assets is derived from Congress, Executive Orders, and court decisions.

### **California Department of Water Resources' Role:**

DWR is the State lead agency for compliance with CEQA, including Sections 21083.2 (g) and 15064.5, which require evaluation of potential impacts to historical and archeological resources. Impacts to potentially-significant resources must be avoided or reduced under CEQA. In addition, the State environmental law provides guidelines for Native American human remains found on State and private lands.

Project planning and management will support compliance and coordination with Reclamation and Tribes to ensure an efficient and comprehensive treatment of both historic properties and Indian Trust Assets. DWR will closely coordinate with their contractors and Reclamation to ensure the documentation meets Federal requirements.

## Draft

### **CALFED Programmatic Policy:**

The CALFED Record of Decision, August 28, 2000, addresses tribal participation, including a commitment to consult with Tribes on a government-to-government basis:

“Consistent with the President’s April 29, 1994 Memorandum, the CALFED Agencies will assess the impact of CALFED project-specific plans, projects and activities on tribal trust resources and tribal government rights and concerns. The CALFED Agencies will actively engage Federally-recognized tribal governments in the planning and development of specific projects in their areas and will consult with such Tribes on a government-to-government basis, to the greatest extent practicable and to the extent permitted by law, prior to taking actions that affect such tribal governments. At the request of any tribal government, the CALFED Agencies will enter into a Memorandum of Understanding with that tribal government or multiple tribal governments that will specify the process for how the federal, state and tribal governments will work together, on a government-to-government basis, in developing CALFED projects.”